**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 458 OF 2002**

Ravikumar @ Rameshkumar Aablesappa Kurba age 21 years, r/at. Janata Lodge B.P. Road, Bhayander (East) originally R/o. Mysore Petrochemical Ltd. Room No. 31 Near Rajmata Mandir, Aasapura Road, Near Raichur Railway Station, Raichur, Karnataka ..Appellant (Ori. Accused)

versus

State of Maharashtra ..Respondents

None for the Appellant / Original Accused.

Mr. K. V. Saste, APP for the Respondents - State.

**CORAM : D. G. DESHPANDE, &**
**Smt. R. S. DALVI,JJ.**

**DATE : 15TH NOVEMBER, 2006**

**ORAL JUDGMENT ( Per: D. G. Deshpande, J.) :**

1. This matter was on board for final hearing when nobody appeared for the appellant. Therefore, on the basis of the judgment of the Supreme Court reported in **1996 Cri. L. J. 3491 Bani Singh and others vs. State of U.P.**, we have heard the learned APP for the State - Respondents on 8.11.2006 and we

kept the matter for judgment, on 10.11.2006, in order to give chance to the Advocate for the Appellant / Accused to appear before we deliver the judgment. However, nobody appeared on 10.11.2006 and again to give one more chance to the Appellant - accused, the matter is adjourned till today i.e. 15.11.2006. Today, also till the delivery of judgment nobody is present for the Appellant / Accused, and therefore we are passing this order.

2. Appellant / Accused is convicted by the Sessions Judge, Thane, by judgment dated 19.4.2002 and convicted under Section 302 and 394 of Indian Penal Code and sentenced to imprisonment of life and fine under Section 302 and for five years and fine under Section 394. Both the sentences were to run concurrently.

3. The case of the prosecution is that one Bhikubhai was the owner of STD booth-cum-shop situate at Mira Road, Bhayander, Shantiganga Apartments, B-45. His house was at some distance away from shop at Market Tower Building. He is the deceased in this case being the victim of murder. The accused had pledged his wrist watch for Rs.100/-

with deceased Bhikubhai. On 20.9.2001 Accused visited the shop for demanding more money. On that day P.W. 2 Sudhaben the wife of the deceased who was present in the shop refused to give more money to the accused.

4. On the same night i.e. 20.9.2001 Bhikubhai did not return his home. Therefore, P.W. 2 Sudhaben wife and P.W. 3 Ashaben daughter of the deceased Bhikubhai got worried. They called the watchman of the building Jyotisingh P.W.1 and asked him to see as to why Bhikubhai had not returned. Watchman P.W. 1 went to the STD booth and found that Bhikubhai was murdered and his body was lying near the STD counter. When Sudhaben and Ashaben P.W. 2 and P.W 3 learnt about this, they immediately rushed to the STD booth. They found that Bhikubhai was dead, they started weeping and they also saw that the wrist watch pledged by the accused was not in the drawer of the counter, so also some other watch and golden ring on the person of deceased was missing. P.W. 1 Jyotisingh lodged report to the police station vide Exhibit 9 on 21.9.2001 at about 3.55 hours. It was reduced into writing by PSI Jadhav P.W. 11.

5. Thereafter, investigation was carried out, spot panchnama, enquest panchnama, post mortem report were prepared by the respective persons. It was found that there were 12 incised wounds and stab wounds on the body of the deceased and the cause of death was given as haemorrhagic shock due to multiple injury over chest wall and abdomen.

6. On 28.9.2001 accused was arrested in another crime, he was injured and therefore he was referred to Bhagwati Hospital at Borivli for medical examination and treatment. On the basis of FIR (Ex. 44) registered in Crime No. 185 of 2001, which was being investigated by API Gaikwad. The accused came to be arrested on 13.10.2001 in the present crime after he was discharged from the hospital on 9.10.2001. In the meantime on 28.9.2001 the wrist watch (Article 3), one jeans pant, T shirt and half nicker of the accused were seized by the police as per the arrest panchnama (Ex. 21). This wrist watch was identified by P.W. 2 Sudhaben, later on.

7. On 13.10.2001 while the accused was in police custody was interrogated before the panchas.

Accused told that he has sold the wrist watch to one gold smith at Navghar Road. This statement was recorded under Section 27 of the Evidence Act, and then the accused led the panch witnesses and the police staff to the said shop, viz. Shilpa Jewellers owned by Pravin (P.W. 4). Thereafter, the owner P.W. 4 produced one golden ring (Article 1). Then the accused led them to another shop, viz. S. K. Jewellers owned by Sanjay P.W. 5 and wrist watch Article 2 was produced. All these Articles were seized and sealed as per the discovery panchnama Ex. 30.

8. On the next day i.e. on 14.10.2001 the accused made statement under Section 27 in the presence of panchas about the knife and led the police party to Janata Lodge from where after opening the suitcase one knife (Article 4) having blood stains on its blade was found kept below the clothes i.e. jeans pant (Article 5) and T. Shirt (Article 6) having blood stains. They were also recovered under discovery panchnama Ex. 32.

9. During the course of investigation, the accused made statement about the place from where he

has purchased the knife (Article 4) i.e. from the shop owned by Mukesh (P.W. 7). The shopkeeper identified the knife before the court. The prosecution also examined Kanhayalal P.W. 8 the owner of the lodge where the accused was staying on 22.8.2001, 26.8.2001, 14.9.2001 and 18.9.2001. It is in this background that the accused was charged for murder and robbery and he was found guilty and came to be convicted as stated above. Therefore, this Appeal.

10. The learned APP pointed out that this is a full proof case against the accused and each and every aspect of the prosecution case has been proved by the prosecution by examining relevant witnesses. The evidence of widow Sudhaben P.W. 2 is recorded at Exhibit 10. She has stated that her husband after retirement from bank used to work in the STD booth of Ganesh Tours & Travels. She has stated that wrist watch was pledged by the accused with her husband for Rs.100/- and she identified the accused in the court. Then she stated that her husband did not return from the shop for quite a long time on that night, she therefore asked the watchman to go and verify. The watchman P.W. 1 went, and after

returning told her that her husband was no more alive. She therefore went to the STD booth and saw that her husband was lying on the ground and she also saw that the wrist watch in the drawer was missing so also watch and golden ring was missing. She has also stated that on the same day in the morning at 10 O'clock the accused had come to the shop, he wanted Rs.5/- more but she told him that she does not have the key of the drawer and she did not give money to him. She has then identified the watch that was missing from the drawer (Article 3). She also identified another watch and finger ring (Articles 1 and 2). In the cross examination of this witness apart from giving suggestion, nothing is brought out on record to create doubt about this witness. She was asked about identification marks on the wrist watch and the ring, which she could not give but she was positive in identifying those items.

11. P.W. 3 Asha is the daughter of the deceased. She has supported the case of the prosecution i.e. about pledging of the watch by the accused and what happened on the fateful night. She has stated that at about 1.15 in the mid night

mother returned from the STD booth and started weeping, therefore, both of them again went to STD booth, she saw her father lying inside the STD booth and she found that finger ring and wrist watch were missing from the person of his father. When she opened the drawer she also found that wrist watch in the drawer was also missing. She identified all the three Articles. She also stated that wrist watch in the drawer was there in the morning on the date of the incident. In the cross examination she has re-affirmed that she was called by the police to identify these three articles which she identified in the court as Articles 1, 2 and 3. She denied suggestion that Articles 1 and 2 did not belong to her father and that Article No.1 was not pledged by anybody.

12. P.W. 1 Jyothisingh watchman has stated how he was informed by P.W. 2 to go and search for deceased Bhikubhai, how he found deceased Bhikubhai dead in the STD booth, then how he came back and narrated these facts to P.W. 2. He also stated that P.W. 2 told him that the wrist watch and golden finger ring was missing from the person of her husband. Then he went to the police station and

lodged report. There is no cross-examination to this witness excepting one question wherein the witness has stated that at 11.30 p.m. he had seen one boy by name Nagesh sitting in the office in front of Bhikubhai. Nothing turns out in the cross-examination in favour of the defence. This witness has proved Exhibit 9 FIR.

13. The case of the prosecution is further strengthened by the arrest of the accused, recovery of clothes from him, recovery of weapon at his instance, purchase of weapon by him, his staying at the lodge, his selling wrist watch and ring to two jewellers. Prosecution proved all those discovery and recovery panchnamas by examining witnesses and nothing is brought on record to doubt or suspect evidence of any of these witnesses, they are not habitual panchas.

14. Dr. Ramchandra Dhotre - P.W. 12 was examined by the prosecution to prove the injuries and the cause of death. He noticed in all 12 injuries. They were incised wounds on left cheek, left chest wall, lower chest wall, abdomen, right lung, heart, abdomen and the probable cause of death

was given by the doctor as haemorrhagic shock due to multiple injury over chest wall and abdomen. Cross examination of this witness was declined by the accused.

15. About discoveries made of incriminating articles at the instance of the accused, the prosecution examined P.W. 14 Gokul Patil. He has stated accused was arrested on 13.10.2001 after he was discharged from another case. Panchnama was prepared vide Exhibit 21, clothes were seized from the person of the accused on 28.9.2001. Those clothes were soiled with blood and they were seized by the police P.W. 14 Head Constable Patil under Exhibit 21. The clothes were shirt and pant and wrist watch were marked Articles 3, 5 and 6.

16. Then, on 13.10.2001 accused was interrogated by this witness in the presence of panch witness, he told about the sale of the wrist watch and golden ring. Then this information was reduced in writing vide Exhibit 21 duly signed by the witness and panchas. Then the witness stated as the accused had led them to two shops one after the other and how gold ring and wrist watch were recovered. Then on

the same day the accused stated that he would point out one knife. It was recorded vide Exhibit 31 in presence of panchas. Then accused led the police party to Janata lodge from where the knife and clothes stained with blood were recovered and the muddemal property was forwarded to the C.A. and C.A. report was received Exhibits 45 and 46.

17. Exhibit 45 is about Banian, underwear, full pant, full open shirt (cut), full pant jeans, T shirt and knife. All of them were found to have human blood of 'A'group. On Jean full pant, and knife human blood was found but grouping could not be conclusively determined as per Exhibit 46.

18. It will be therefore clear that the accused was at all not successful in making any dent in the prosecution case and prosecution witnesses. Each and every circumstance brought on record proved to the guilt of the accused and none else. Therefore, there is no reason to interfere. Appeal is dismissed.

**(D.G. DESHPANDE, J.)**

**(Smt. R.S. DALVI, J.)**